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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047135
Party	Defendant GGW Marketing, LLC GGW Marketing, LLC 1005 APOLLO WAY INCLINE VILLAGE, NV 89451
Correspondence Address	J. Alison Grabell Venable LLP 2049 Century Park East Suite 2100 Los Angeles, CA 90067 UNITED STATES agrabell@venable.com, jesty@venable.com, jleavitt@venable.com
Submission	Motion to Dismiss - Rule 12(b)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ALLOUTOFF, INC.,

Petitioner,

v.

GGW MARKETING, LLC,

Respondent.

Cancellation No. **92047135**

Registration No. 2,611,100

Mark: BANNED FROM
TELEVISION

Registration Date: August 27, 2002

**RESPONDENT GGW MARKETING, LLC'S MOTION TO DISMISS THE PETITION TO
CANCEL FOR PETITIONER'S LACK OF CAPACITY AND LACK OF STANDING TO
FILE THE PETITION TO CANCEL, AND TO INVALIDATE PETITIONER'S PENDING
APPLICATIONS, PURSUANT TO FED. R. CIV. P. 12(b)(6) AND 17(b) AND CALIFORNIA
STATUTES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF; AND DECLARATION OF J. ALISON GRABELL**

I. INTRODUCTION

Respondent GGW Marketing, LLC ("GGW Marketing") respectfully hereby moves the Trademark Trial and Appeal Board, pursuant to § 2.116(a) of the Trademark Rules of Practice and Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the petition to cancel Registration No. 2,611,100 filed by Alloutof, Inc. ("Alloutof"), on the grounds that Alloutof lacks both capacity and standing to institute this cancellation proceeding.

This Motion is based upon the record, including Alloutof's pending applications Serial Nos. 78,822,188 filed on February 23, 2006, 78/827,750 filed on March 2, 2006, 78/827,792 filed on March 2, 2006 and 78/827,739 filed March 2, 2006 (collectively the "BANNED Marks" trademark

applications); the Petition to Cancel (“the Petition”); and the attached Declaration of J. Alison Grabell (“Grabell Decl.”).

II. BACKGROUND FACTS

Petitioner Alloutof is a corporation purportedly organized under the laws of the State of California. *See* the Petition, at Preamble. The corporate powers, rights and privileges of Alloutof were suspended by the California Franchise Tax Board on January 3, 2006. Alloutof’s corporate status has not been reinstated. *See* Grabell Decl., ¶ 3, Ex. 1. Thus, Alloutof was a suspended corporation under the laws of the State of California at the time of filing the Petition (February 20, 2007) and at the time of filing of the BANNED Marks applications (filed February 23 and March 2, 2006). *See* Petition ¶ 6.

III. ARGUMENT

A. THIS PROCEEDING SHOULD BE DISMISSED BECAUSE ALLOUTOF LACKS STANDING.

For a petitioner to prevail in a cancellation proceeding, it must show (1) that it possesses standing to challenge the continued presence on the register of the subject registration and (2) that there is a valid ground why the registrant is not entitled under law to maintain the registration. *See Lipton Indus., Inc. v. Ralston Purina*, 670 F.2d 1024, 1026 (CCPA 1982). Thus, the threshold determination in a cancellation proceeding is whether the petitioner has standing to file the petition. *See* TBMP § 503.02; *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1308 (Fed. Cir. 2003). Standing is a threshold issue that must be proven by a plaintiff in every inter partes case. *See Lipton*, 670 F.2d at 1026. Absent standing, the Petition must be dismissed.

The starting point for a standing determination in a cancellation proceeding is Trademark Act Section 14, 15 U.S.C. Section 1064, which provides, in relevant part, that “[a] petition to cancel a

registration of a mark, stating the grounds relied upon, may ... be filed as follows by any person who believes that he is or will be damaged ... by the registration. . . .” *Id.* The term “person” includes both natural and juristic persons. 15 U.S.C. § 1127; TBMP § 303.02 (a juristic person includes a corporation “capable of suing” in a court of law). A corporation that is not “a legal entity which can sue or be sued does not have legal standing to own a mark or to file an application for registration ... or a petition for cancellation.” TBMP § 303.02 (emphasis added); *In re Cambridge Digital Sys.*, 1 USPQ2d 1659, 1660 n.1 (TTAB 1986).

Consequently, the Petition must be dismissed because: (1) Alloutof lacks standing to assert the Petition, and (2) assuming, *arguendo*, Alloutof is able to obtain standing, the BANNED Marks applications cannot be the basis for this proceeding because as the applications are invalid *ab initio*.

1. Alloutof Lacks Standing to Assert the Petition.

Federal Rule of Civil Procedure 17(b) provides in relevant part: “The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized.” Capacity to sue and be sued is determined under the law of the state of incorporation. Fed. R. Civ. P. 17(b); *In the Matter of Christian and Porter Aluminum Co.*, 584 F.2d 326, 331 (9th Cir. 1978); *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1307 (Fed. Cir. 2003).

Alloutof purports to be a California corporation. Under California law, the “corporate powers, rights, and privileges of a domestic taxpayer may be suspended if “any tax, penalty or interest ... upon notice and demand from the Franchise Tax Board, is not paid” as provided in the statute. Cal. Rev. and Tax. C. § 23301, Grabell Decl. ¶ 4, Ex. 2; *In the Matter of Arnold and Porter*, 584 F.2d at 331. A corporation suspended for failure to pay taxes is prohibited from “enjoying the ordinary privileges” of a corporation in good standing, and is “disabled from resort to the courts for any purpose.” *Palm Valley Homeowners Assoc. v. Design MTC*, 85 Cal.App.4th 553, 558, 560 (4th

Dist. 2001) (interpreting and comparing the California Corporations Code and the California Revenue and Taxation Code, and concluding that “a corporation suspended for non-payment of taxes, is well and truly suspended, and disabled from participating in any litigation activities”) (emphasis added); *see also Grell v. Laci Le Beau Corp.*, 73 Cal.App.4th 1300, 1306 (1st Dist. 1999) (a suspended corporation is “disqualified” from exercising any right, power or privilege and may not prosecute or defend any action). If suspended, the petitioner corporate entity has the burden of showing that it was revived or, at the least, was in the process of applying for revivor during the relevant time period in order to have standing to attempt to assert any action. *See* Cal. Rev. and Tax. C. § 23305, Grabell Decl. ¶ 4, Ex. 2.

The California Secretary of State has certified that the corporate status of Alloutof was suspended on January 3, 2006 and is currently suspended, without any application for revivor having been filed. Grabell Decl. ¶ 3, Ex. 1. Thus, at the time of filing of the Petition on February 20, 2007, Alloutof had been suspended for more than one year. Accordingly, Alloutof cannot participate in any litigation activities, and thus is not a “person” with standing to assert the Petition.

2. Alloutof Did Not Own The BANNED Marks At The Time The Applications Were Filed.

Alloutof has put in issue the BANNED Marks applications, which were refused registration based on a likelihood of confusion with GGW Marketing’s registered mark, BANNED FROM TELEVISION. *See* Petition ¶¶ 6, 8. Alloutof has asserted the BANNED Marks applications in support of its Petition. Yet, each of these four filings occurred during Alloutof’s statutory suspension of its corporate powers, rights and privileges. *See* Petition ¶ 6; Grabell Decl. ¶, Ex. 1. The applicant for a trademark may be any person or entity capable of suing and being sued in a court of law. TMEP § 1201.02(a). As shown above, Alloutof cannot meet this most basic requirement.

Further, if the applicant does not own the mark on the application filing date, the application is *void*. TMEP § 1201.02(b); 37 C.F.R. §2.71(d); *Huang v. Tzu Wei Chen Food Co. Ltd.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988). Accordingly, as Alloutof was not a proper entity, it could not possibly own the marks on the filing date for the BANNED Marks applications. As the BANNED Marks were not properly filed, they are void and should be expressly abandoned.

Moreover, despite lack of standing, Alloutof seeks the benefits accorded trademark applicants incorporated and in good standing in California, yet under the laws of California it is not entitled to seek those benefits. As a suspended corporation, pursuant to California law (applicable to this proceeding by Fed. R. Civ. P. 17(b)), is specifically prohibited from seeking such judicial relief.

Therefore, the BANNED Marks applications are subject to attack because Alloutof did not have standing either to own BANNED Marks at the time of the four applications or to even file the four applications in the first place. Accordingly, the BANNED Marks cannot be used as the basis for the Petition.

B. DISMISSAL OF THE PETITION AND TERMINATION OF THE PROCEEDING ARE JUST.

Assuming, *arguendo*, that Alloutof applies for revivor in response to this motion, the Board should apply Federal and California law and dismiss the petition and terminate the proceeding. Any other result would run counter to Federal and California law and would grant Alloutof rights and privileges that Federal and California law reserve for corporations in good standing and, in this case, specifically preclude.

The Board has inherent power to sanction conduct in a variety of situations that may not otherwise fall within the sanctioning provisions of the rules. TBMP § 527.03; *see Matter of Christian & Porter Aluminum Co.*, 584 F.2d 326, 332 (9th Cir. 1978) (finding the suspended

appellants' conduct egregious). This is just such a case. It is not sufficient to dismiss the Petition and merely allow the BANNED Marks applications to become abandoned. TBMP § 807. Nor is it just to suspend the proceeding pending revivor. Alloutof, notwithstanding its more than year-long suspension, engaged in a pattern of conduct in its dealings with the Trademark Office and with the Board designed to benefit from the privileges and protections of Federal trademark registration accorded to applicants in good standing, beginning with the filing of the BANNED Marks applications and continuing to the filing of the Petition on February 20, 2007. The Board should not permit Alloutof to maintain and enjoy rights, powers and privileges that the laws of California and the Federal Rules deny it. Accordingly, GGW Marketing respectfully requests the Board to grant GGW Marketing's Motion to Dismiss the Petition as an unauthorized act of a suspended corporation and to terminate the proceeding.

IV. CONCLUSION

For the foregoing reasons, Respondent GGW Marketing respectfully moves the Board to dismiss the Petition to Cancel and to terminate the cancellation proceeding.

DATED: April 9, 2007

Respectfully submitted,

By: 

JoAnna M. Esty
J. Alison Grabell
Jenna F. Leavitt

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Attorneys for Respondent
GGW MARKETING, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable, LLP 2049 Century Park East, Suite 2100, Los Angeles, California.

On April 9, 2007, I served the foregoing document(s) described as:

**RESPONDENT GGW MARKETING, LLC'S MOTION TO DISMISS
THE PETITION TO CANCEL FOR PETITIONER'S LACK OF
CAPACITY AND LACK OF STANDING TO FILE THE PETITION TO
CANCEL, AND TO INVALIDATE PETITIONER'S PENDING
APPLICATIONS, PURSUANT TO FED. R. CIV. P. 12(B)(6) AND 17(B)
AND CALIFORNIA STATUTES; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF; AND DECLARATION OF J.
ALISON GRABELL**

on the interested parties in this action addressed as follows:

Attorney for Petitioner Alloutof, Inc.

Michael C. Cerrati, Esq.
PATEL & ALUMIT P.C.
16830 Ventura Boulevard
Suite 360
Encino, California 91436
Telephone: (818) 380-1900
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☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☐ **BY PERSONAL SERVICE (CCP §1011):** I delivered such envelope(s) by hand to the addressee(s) as stated above.

☒ **BY MAIL (CCP §1013(a)&(b)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

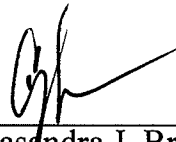
☐ **BY OVERNIGHT DELIVERY (CCP §1013(c)&(d)):** I am readily familiar with the firm's practice of collection and processing items for delivery with Overnight Delivery. Under that practice such envelope(s) is deposited at a facility regularly maintained by Overnight Delivery or delivered to an authorized courier or driver authorized by Overnight Delivery to receive such envelope(s), on the same day this declaration was executed, with delivery fees fully provided for at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

1 ☐ **BY FACSIMILE:** Pursuant to CCP §1013(e) and (f) and CRC Rule 2008, on April 9,
2 2007, at approximately _____ m., I served the above stated document by facsimile
3 from the facsimile machine of Venable, LLP whose phone number is (310) 229-9901 to
4 the addressee(s) at the facsimile numbers as stated above. The facsimile machine used
5 complies with CRC Rule 2003(3). Pursuant to CRC Rule 2008(e) the transmission be
6 facsimile was reported as complete and without error.

7 Executed on April 9, 2007 at Los Angeles, California

8 ☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California
9 that the above is true and correct.

10 ☒ **(FEDERAL)** I declare that I am employed in the office of a member of the Bar of this
11 Court at whose direction the service was made. I declare under penalty of perjury
12 under the laws of the United States of America that the above is true and correct.

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Cassandra J. Broome

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ALLOUTOF, INC.,

Petitioner,

v.

GGW MARKETING, LLC,

Respondent.

Cancellation No. **92047135**

Registration No. 2,611,100

Mark: BANNED FROM
TELEVISION

Registration Date: August 27, 2002

DECLARATION OF J. ALISON GRABELL

I, J. ALISON GRABELL, declare as follows:

1. I am a member of the State Bar of California and of counsel at the law firm of Venable LLP, counsel for respondent, GGW Marketing, Inc. ("GGW Marketing") in this proceeding.
2. I make this declaration on the basis of my own personal knowledge and if I were called as a witness in this proceeding, I could and would testify competently to the following facts.
3. Attached hereto as Exhibit 1 is a true and correct copy of Certificate of Status of Alloutof, Inc., issued by the Secretary of State, State of California, dated March 31, 2007.

4. Attached hereto as Exhibit 2 is a true and correct copy of Cal. Rev. and Tax.
Code §§ 23301-23305e.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on this 9th day of April, 2007 at Los Angeles, California.



J ALISON GRABELL

EXHIBIT "1"

State of California
Secretary of State

CERTIFICATE OF STATUS

ENTITY NAME: ALLOUTOF, INC.
ENTITY FILE NUMBER: C2650551
ENTITY FILE DATE: APRIL 12, 2004
ENTITY TYPE: DOMESTIC CORPORATION
ENTITY JURISDICTION: CALIFORNIA
ENTITY STATUS: SUSPENDED

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the corporate powers, rights and privileges of the above-referenced entity were suspended by the California Franchise Tax Board on January 3, 2006 pursuant to the provisions of the California Revenue and Taxation Code; and

That the powers, rights and privileges of the above-referenced entity remain suspended, reinstatement never having been effected.



IN WITNESS WHEREOF, I execute this certificate
and affix the Great Seal of the State of California
this day of March 31, 2007.

Debra Bowen

DEBRA BOWEN
Secretary of State

EXHIBIT "2"

Alloutof, Inc. v. GGW Marketing LLC
Cancellation Number 92047135
Registration Number 2,611,100
Submitted by Respondent:
GGW Marketing LLC

REVENUE AND TAXATION CODE

SECTION 23301-23305e

23301. Except for the purposes of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the corporate powers, rights and privileges of a domestic taxpayer may be suspended, and the exercise of the corporate powers, rights and privileges of a foreign taxpayer in this state may be forfeited, if any of the following conditions occur:

(a) If any tax, penalty, or interest, or any portion thereof, that is due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, either at the time the return is required to be filed or on or before the 15th day of the ninth month following the close of the taxable year, is not paid on or before 6 p.m. on the last day of the 12th month after the close of the taxable year.

(b) If any tax, penalty, or interest, or any portion thereof, due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, upon notice and demand from the Franchise Tax Board, is not paid on or before 6 p.m. on the last day of the 11th month following the due date of the tax.

(c) If any liability, or any portion thereof, which is due and payable under Article 7 (commencing with Section 19131) of Chapter 4 of Part 10.2, is not paid on or before 6 p.m. on the last day of the 11th month following the date that the tax liability is due and payable.

23301.5. Except for the purposes of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the corporate powers, rights, and privileges of a domestic taxpayer may be suspended, and the exercise of the corporate powers, rights, and privileges of a foreign taxpayer in this state may be forfeited, if a taxpayer fails to file a tax return required by this part.

23301.6. Sections 23301, 23301.5, and 23775 shall apply to a foreign taxpayer only if the taxpayer is qualified to do business in California. A taxpayer that is required under Section 2105 of the Corporations Code to qualify to do business shall not be deemed to have qualified to do business for purposes of this article unless the taxpayer has in fact qualified with the Secretary of State.

23302. (a) Forfeiture or suspension of a taxpayer's powers, rights, and privileges pursuant to Section 23301, 23301.5, or 23775 shall occur and become effective only as expressly provided in this section in conjunction with Section 21020, which requires notice prior to the suspension of a taxpayer's corporate powers, rights, and privileges.

(b) The notice requirements of Section 21020 shall also apply to

PAGE 4
DECLARATION OF J. ALISON
GRABELL

Alloutof, Inc. v. GW Marketing LLC

Cancellation Number 92047135

Registration Number 2,611,100

Submitted by Respondent:

GW Marketing LLC

any forfeiture of a taxpayer's corporate powers, rights, and privileges pursuant to Section 23301, 23301.5, or 23775 and to any voidability pursuant to subdivision (d) of Section 23304.1.

(c) The Franchise Tax Board shall transmit the names of taxpayers to the Secretary of State as to which the suspension or forfeiture provisions of Section 23301, 23301.5, or 23775 are or become applicable, and the suspension or forfeiture therein provided for shall thereupon become effective. The certificate of the Secretary of State shall be prima facie evidence of the suspension or forfeiture.

(d) If a taxpayer's powers, rights, and privileges are forfeited or suspended pursuant to Section 23301, 23301.5, or 23775, without limiting any other consequences of such forfeiture or suspension, the taxpayer shall not be entitled to sell, transfer, or exchange real property in California during the period of forfeiture or suspension.

23303. Notwithstanding the provisions of Section 23301 or 23301.5, any corporation that transacts business or receives income within the period of its suspension or forfeiture shall be subject to tax under the provisions of this chapter.

23304.1. (a) Every contract made in this state by a taxpayer during the time that the taxpayer's corporate powers, rights, and privileges are suspended or forfeited pursuant to Section 23301, 23301.5, or 23775 shall, subject to Section 23304.5, be voidable at the instance of any party to the contract other than the taxpayer.

(b) If a foreign taxpayer that neither is qualified to do business nor has a corporate account number from the Franchise Tax Board, fails to file a tax return required under this part, any contract made in this state by that taxpayer during the applicable period specified in subdivision (c) shall, subject to Section 23304.5, be voidable at the instance of any party to the contract other than the taxpayer.

(c) For purposes of subdivision (b), the applicable period shall be the period beginning on January 1, 1991, or the first day of the taxable year for which the taxpayer has failed to file a return, whichever is later, and ending on the earlier of the date the taxpayer qualified to do business in this state or the date the taxpayer obtained a corporate account number from the Franchise Tax Board.

(d) If a taxpayer fails to file a tax return required under this part, to pay any tax or other amount owing to the Franchise Tax Board under this part or to file any statement or return required under Section 23772 or 23774, within 60 days after the Franchise Tax Board mails a written demand therefor, any contract made in this state by the taxpayer during the period beginning at the end of the 60-day demand period and ending on the date relief is granted under Section 23305.1, or the date the taxpayer qualifies to do business in this state, whichever is earlier, shall be voidable at the instance of any party to the contract other than the taxpayer. This subdivision shall apply only to a taxpayer if the taxpayer has a corporate account number from the Franchise Tax Board, but has not qualified to do business under Section 2105 of the Corporations Code. In the case of a taxpayer that has not complied with the 60-day demand, the taxpayer's name, Franchise Tax Board corporate account number, date of the demand, date of the first day after the end of the 60-day demand period, and the fact that the taxpayer did not within that

PAGE 5

DECLARATION OF J. ALISON
GRABELL

period pay the tax or other amount or file the statement or return, as the case may be, shall be a matter of public record.

Alloutof, Inc. v. GGW Marketing LLC
Cancellation Number 92047135
Registration Number 2,611,100
Submitted by Respondent:
GGW Marketing LLC

23304.5. A party that has the right to declare a contract to be voidable pursuant to Section 23304.1 may exercise that right only in a lawsuit brought by either party with respect to the contract in a court of competent jurisdiction and the rights of the parties to the contract shall not be affected by Section 23304. 1 except to the extent expressly provided by a final judgment of the court, which judgment shall not be issued unless the taxpayer is allowed a reasonable opportunity to cure the voidability under Section 23305.1.

If the court finds that the contract is voidable under Section 23304.1, the court shall order the contract to be rescinded. However, in no event shall the court order rescission of a taxpayer's contract unless the taxpayer receives full restitution of the benefits provided by the taxpayer under the contract.

23305. Any taxpayer which has suffered the suspension or forfeiture provided for in Section 23301 or 23301.5 may be relieved therefrom upon making application therefor in writing to the Franchise Tax Board and upon the filing of all tax returns required under this part, and the payment of the tax, additions to tax, penalties, interest, and any other amounts for nonpayment of which the suspension or forfeiture occurred, together with all other taxes, additions to tax, penalties, interest, and any other amounts due under this part, and upon the issuance by the Franchise Tax Board of a certificate of revivor. Application for the certificate on behalf of any taxpayer which has suffered suspension or forfeiture may be made by any stockholder or creditor, by a majority of the surviving trustees or directors thereof, by an officer, or by any other person who has interest in the relief from suspension or forfeiture.

23305.1. (a) A taxpayer may make application to the Franchise Tax Board for relief from the voidability provisions of Section 23304.1. To be relieved from voidability, the taxpayer shall do all of the following:

(1) Provide the Franchise Tax Board with an application for relief from contract voidability in a form and manner prescribed by the Franchise Tax Board.

(2) Include on the application the period for which relief is requested in accordance with subdivision (b).

(3) File any tax returns required to be filed under this part with the Franchise Tax Board, including returns for the period for which relief is requested.

(4) Pay any tax, additions to tax, penalties, interest, and any other amounts owing to the Franchise Tax Board, including any liability attributable to the period for which relief is requested.

(5) Pay any penalty imposed under subdivision (b) for the period for which relief is requested.

(6) In the case of a taxpayer that applies for and enters into an approved voluntary disclosure agreement in accordance with Article 8 (commencing with Section 19191) of Chapter 4 of Part 10.2, for purposes of this section, the taxpayer shall be considered to have met the requirements of paragraphs (3), (4), and (5) if the taxpayer

PAGE 6
DECLARATION OF J. ALISON
GRABELL

Alloutof, Inc. v. GW Marketing L
Cancellation Number 92047135
Registration Number 2,611,100
Submitted by Respondent:
GGW Marketing LLC

fulfills to the satisfaction of the Franchise Tax Board all the specifications of the voluntary disclosure agreement within the meaning of paragraph (2) of subdivision (d) of Section 19191 and if the Franchise Tax Board has not found that any of the circumstances described in Section 19194 has rendered the voluntary disclosure agreement null and void.

(b) (1) Except as provided in paragraph (2), both of the following shall apply:

(A) The period for which relief is requested shall begin on the date that one of the taxpayer's taxable years begins and ends on the date that relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars (\$100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to the amount of the tax for the period for which relief is requested.

(2) If an application for relief from voidability is filed for a period in which an application for revivor has been filed and the certificate of revivor has been issued, all of the following shall apply:

(A) The period for which relief is requested shall begin on the date the taxpayer's powers, rights, and privileges had been suspended or forfeited and ends on the date relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars (\$100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to that amount of the tax that would be imposed under Section 23151 and, except as provided in subparagraph (C), that penalty shall be equal to no less than the amount of the minimum tax provided under Section 23153 for the period for which relief is requested.

(C) In the case of an exempt organization or trust subject to Article 2 (commencing with Section 23731) of Chapter 4 (the tax on unrelated business taxable income), the daily penalty provided in subparagraph (B) shall not exceed a total penalty equal to the amount of tax imposed upon its unrelated business taxable income for the period for which relief is requested.

(3) Any penalty imposed under this subdivision shall, subject to Section 23305.2, be due and payable on demand by the Franchise Tax Board.

(c) (1) Upon satisfaction of the conditions specified in subdivision (a), including through the application of Section 23305.2, the following shall apply:

(A) All contracts entered into during the period for which relief is granted that have not been rescinded by a final court order pursuant to Section 23304.5 may be enforced in the same manner and to the same extent, with regard to both the parties to the contract and any third parties, as if the contract had never been voidable.

(B) Any sale, transfer, or exchange of real property in California during the period for which relief is granted and which the taxpayer at that time was not entitled to sell, transfer, or exchange by reason of subdivision (d) of Section 23302 and which has not been rescinded by a final court order pursuant to Section 23304.5, shall be as valid as if the taxpayer had not been subject to subdivision (d) of Section 23302 at the time of the sale, transfer, or exchange.

(2) Upon being granted relief from voidability, the Franchise Tax Board shall certify that relief to the taxpayer in a form and manner as prescribed by the Franchise Tax Board. The certificate shall be issued or mailed to the taxpayer, or as directed by the taxpayer, and shall indicate the period for which relief is granted.

PAGE 7
DECLARATION OF J. ALISON
GRABELL

(d) The fact that a certificate of relief from voidability was issued pursuant to this section and the information contained on that certificate shall be subject to public disclosure. The certificate shall be prima facie evidence of the relief from voidability for contracts entered into during the period of relief stated on the certificate and the certificate may be recorded in the office of the county recorder of any county of this state.

(e) Subject to limitations set forth in Section 17 of Chapter 926 of the Statutes of 1990, a taxpayer that received a certificate of revivor between January 1, 1990, and January 1, 1991, may apply for relief from voidability under this section.

23305.2. Notwithstanding Sections 23305 and 23305.1 that require a taxpayer to pay any liability to the Franchise Tax Board as a condition to revivor or relief from voidability, the Franchise Tax Board shall issue a certificate of revivor under Section 23305, or of relief from voidability under Section 23305.1, if the taxpayer provides the Franchise Tax Board with an assumption of liability, or a bond, deposit, or other security for taxpayer's liability, that is acceptable to the Franchise Tax Board. The Franchise Tax Board shall notify the person filing the application for revivor or relief from voidability of the amount of the bond, deposit, or other security, or of the terms of an assumption of liability, that must be furnished as a condition of the revivor or the relief from voidability. Obtaining revivor or voidability relief by securing the debt pursuant to this section shall not constitute an admission of liability by the taxpayer, nor relieve the taxpayer or any individual or corporation from liability for any taxes, additions to tax, penalties, or interest imposed by this part. A taxpayer that provides an assumption of liability or a bond, deposit, or other security to obtain revivor or relief from voidability may, notwithstanding Section 23305 or 23305.1, file any returns required under those sections within a reasonable time after relief is granted by the Franchise Tax Board.

23305.5. (a) For the purposes of this article, "taxpayer" shall include any limited liability company, foreign or domestic, that is organized in this state or registered with the Secretary of State.

(b) For purposes of this article, in the case of a limited liability company:

(1) "Articles of incorporation" shall include a limited liability company's articles of organization.

(2) "Tax" shall include the tax and fee imposed by Sections 17941 and 17942, or former Sections 23091 and 23092, respectively.

23305a. Before the certificate of revivor is issued by the Franchise Tax Board, it shall obtain from the Secretary of State an endorsement upon the application of the fact that the name of the taxpayer then meets the requirements of subdivision (b) of Section 201 of the Corporations Code in the case of a domestic taxpayer or of subdivision (b) of Section 2106 of the Corporations Code in the case of a foreign taxpayer that has qualified to do business. The reference to amendment of the articles of incorporation to set forth a new name contained in Sections 23301, 23301.5, and 23775 includes

Alloutof, Inc. v. GGW Marketing LLC
Cancellation Number 92047135
Registration Number 2,611,100
Submitted by Respondent:
GGW Marketing LLC

in the case of a foreign taxpayer the filing of an amended statement and designation to set forth its new name or to set forth an assumed name under subdivision (b) of Section 2106 of the Corporations Code. Upon the issuance of the certificate by the Franchise Tax Board the taxpayer therein named shall become reinstated but the reinstatement shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture, except that contracts which were voidable pursuant to Section 23304.1, but which have not been rescinded pursuant to Section 23304.5, may have that voidability cured in accordance with Section 23305.1. The certificate of revivor shall be prima facie evidence of the reinstatement and the certificate may be recorded in the office of the county recorder of any county of this state.

Alloutof, Inc. v. GGW Marketing LLC
Cancellation Number 92047135
Registration Number 2,611,100
Submitted by Respondent:
GGW Marketing LLC

23305b. Notwithstanding Section 23305, the Franchise Tax Board may revive a corporation to good standing without full payment of the taxes, penalties, and interest due if it determines that the revivor will improve the prospects for collection of the full amount due. This revivor may be limited as to time or may limit the functions the revived corporation can perform, or both. The corporate powers, rights, and privileges may again be suspended or forfeited if the Franchise Tax Board determines that the prospects for collection of the full amount due have not been improved by the revivor of the corporation.

23305c. (a) Upon issuance of the certificate of revivor, the Franchise Tax Board shall transmit to the Secretary of State the revived taxpayer's name and its corporate number.

(b) The taxpayer's name and number, the fact that the taxpayer's corporate powers, rights, and privileges have been revived and the effective date of the revivor shall be a matter of public record.

(c) If the Franchise Tax Board determines that a suspension or forfeiture was in error by the Franchise Tax Board, the Franchise Tax Board shall, in connection with the revivor, indicate that the taxpayer is "restored." The status of the restored taxpayer shall be retroactive to the date of suspension or forfeiture as if there had been no suspension or forfeiture.

(d) If the Franchise Tax Board determines that the mailing of the 60-day demand notice referred to in subdivision (d) of Section 23304.1 was in error or that the Franchise Tax Board's original determination as to compliance with the 60-day demand notice was in error, the Franchise Tax Board's revised conclusions also shall be part of the public record referred to in that subdivision.

23305d. A certificate of suspension or forfeiture from the Franchise Tax Board setting forth that the suspended or forfeited taxpayer has been notified of its liability for tax or requirement to file a return under this part and that the tax has not been paid or the return has not been filed, shall constitute prima facie evidence of the facts.

23305e. (a) The Franchise Tax Board may provide letters of good standing, verifying a corporation's status for doing business in

PAGE 9
DECLARATION OF J. ALISON
GRABELL

California, at a charge reflecting the reasonable costs to the department of responding to these requests.

(b) Fees received under this section shall be handled in accordance with Section 19604.

Alloutof, Inc. v. GGW Marketing LLC

Cancellation Number 92047135

Registration Number 2,611,100

Submitted by Respondent:

GGW Marketing LLC

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable, LLP 2049 Century Park East, Suite 2100, Los Angeles, California.

On April 9, 2007, I served the foregoing document(s) described as:

**DECLARATION OF J. ALISON GRABELL IN SUPPORT OF
RESPONDENT GGW MARKETING, LLC'S MOTION TO DISMISS
THE PETITION TO CANCEL FOR PETITIONER'S LACK OF
CAPACITY AND LACK OF STANDING TO FILE THE PETITION TO
CANCEL, AND TO INVALIDATE PETITIONER'S PENDING
APPLICATIONS, PURSUANT TO FED. R. CIV. P. 12(B)(6) AND 17(B)
AND CALIFORNIA STATUTES**

on the interested parties in this action addressed as follows:

Attorney for Petitioner Alloutof, Inc.

Michael C. Cerrati, Esq.
PATEL & ALUMIT P.C.
16830 Ventura Boulevard
Suite 360
Encino, California 91436
Telephone: (818) 380-1900
Facsimile: (818) 380-1908
E-Mail: Michael@PatelAlumit.com

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☐ **BY PERSONAL SERVICE (CCP §1011):** I delivered such envelope(s) by hand to the addressee(s) as stated above.

☒ **BY MAIL (CCP §1013(a)&(b)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.


☐ **BY OVERNIGHT DELIVERY (CCP §1013(c)&(d)):** I am readily familiar with the firm's practice of collection and processing items for delivery with Overnight Delivery. Under that practice such envelope(s) is deposited at a facility regularly maintained by Overnight Delivery or delivered to an authorized courier or driver authorized by Overnight Delivery to receive such envelope(s), on the same day this declaration was executed, with delivery fees fully provided for at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

☐ **BY FACSIMILE:** Pursuant to CCP §1013(e) and (f) and CRC Rule 2008, on April 9, 2007, at approximately _____ m., I served the above stated document by facsimile from the facsimile machine of Venable, LLP whose phone number is (310) 229-9901 to the addressee(s) at the facsimile numbers as stated above. The facsimile machine used complies with CRC Rule 2003(3). Pursuant to CRC Rule 2008(e) the transmission be facsimile was reported as complete and without error.

Executed on April 9, 2007 at Los Angeles, California

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.


Cassandra J. Broome